IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3187 OF 1993

Parvatibai U. Ramchandani ..Petitioner
versus
M/s. Kiran Radar Pvt. Ltd. ..Respondents

Mr. V. B. Rajure for the Petitioner.
None for the Respondents.

CORAM : D. G. DESHPANDE, J.
DATE : 11TH OCTOBER, 2006

ORAL ORDER :

1. Heard Counsel for the petitioner. Nobody is present for the Respondents.

2. Petitioner is a landlady. She purchased the suit property at Pune and filed a suit for eviction on the ground of bonafide occupation and change of user. The suit was decreed on both the counts by the trial court. The tenant preferred an Appeal and the appellate court allowed the appeal and dismissed the suit, therefore this petition.

3. Counsel for the petitioner contended that it has been proved successfully by the plaintiff -

landlady that she had no other house of her own. That she and her husband wanted to shift to Pune for residence as well as for carrying on business. That fact has been specifically stated in the plaint and therefore she was in need of the tenanted premises from the respondents. The tenant resisted the claim, and therefore the trial court framed issues on the basis of the pleadings of the parties. The issues framed are as follows:

1. Does plaintiff prove that she required the suit premises reasonably and bonafide for her own use and occupation?

2. To whom greater hardship would be caused by granting of the decree rather than refusing to pass it?

3. Is plaintiff entitled to possession?

4. What order and decree?

4. The trial court has considered the evidence

minutely oral as well as documentary. He found that the plaintiff purchased the suit flat in 1972. At that time her husband was in service out of India in Nigeria. She retired from service in 1982 and she decided to settle down in Pune. At the time of the purchase of the flat, the plaintiff was residing at Jaipur. But since they wanted to settle and start business at Pune, the suit flat was purchased. The suit notice was given by the plaintiff on 29.9.1982. Obviously, defendant did not vacate the premises and therefore the suit was required to be filed. According to the defendant - tenant the flat is not required by the Plaintiff. I do not find anything being brought on record by the defendant to the effect that the plaintiff has any other house at Pune.

5. Now, if in the particular circumstances, the plaintiff and her husband decides to settle at Pune, their decision cannot be questioned by the defendants, nor the court can say that this decision is malafide. Where to settle and where to carry on business is an individual decision. Unless there is something to the contrary, the tenant atleast cannot question this decision. Therefore, when coupled

with this decision of the plaintiff it has come on record that plaintiff do not have any other property in Pune, then their requirement has to be considered and accepted as bonafide which was rightly done by the trial court. The appellate court however questioned the bonafides of the plaintiff. While doing so, the appellate court in paragraph 13 concluded that the plaintiff has not vacated their house at Jaipur and they were still paying the rent which according to the appellate court is the circumstance going against the plaintiff. That approach is totally perverse because if the flat at Pune was not available for immediate occupation, nobody could expect the plaintiff to vacate their dwelling place at Jaipur. No sane person would vacate the existing premises in anticipation of getting tenanted premises in possession. There has to be a roof over ones head and till there is assurance and guarantee of getting the tenanted premises, the plaintiff was fully justified in retaining their house at Jaipur. Second reason given by the appellate court while rejecting the claim of the plaintiff is that her evidence is contradictory to the plaint. In paragraph 12 the appellate court has observed that according to the

plaintiff she intends to start garment business at Pune but according to the appellate court it is an after thought and there is no such pleading of the plaintiff in the plaint. My attention in this regard was drawn by Mr. Rajure to the copy of the plaint filed with this petition where in paragraph 3, the plaintiff has stated as under:

> **"The plaintiff and her husband wants to reside in Pune permanently. The plaintiffs husband wants to do business in Pune, and that he has good prospects in Pune."**

When therefore the plaintiff has clarified that apart from residing in the suit premises they also want to carry on business, then not mentioning the nature of business in the plaint, cannot be taken as a circumstance against the plaintiff nor it can be held that the evidence given in that regard is an after thought. The appellate court also in paragraph 10, took note of the four grounds on which the bonafide requirement was tried to be established by the plaintiff:

> **(1) That the climate of Jaypur is extreme and it does not suit for the original**

pltff./the respondent;

(2) That the original plff/the respndt. is suffering from ailments and as such, she is intending to settle down at Pune permanently for change of climate;

(3) That her husband intends to start garments business at Pune; and

(4) That her landlord at Jaypur wants her to vacate the tenanted premises occupied by her.

The appellate court rejected the claim and contention of the plaintiff and held that he has no documentary evidence to show that his wife i.e. respondent / the original plaintiff is suffering from ailments. This is a totally wrong approach. The need for bonafide requirement was properly pleaded and correctly proved i.e. by all requirement of law. The trial court appreciated the evidence in proper perspective. The judgment of the appellate court is perverse. Therefore, this petition is required to be allowed.

6. In the result, the petition is allowed. Rule made absolute. Judgment of the appellate court is set aside and quashed. The decree of the trial court is confirmed and maintained.

(D.G. DESHPANDE, J.)